

WV DEVELOPMENTAL DISABILITIES COUNCIL  
Comments on proposed changes to the  
I/DD Waiver Manual  
September 12, 2012

The WV DD Council appreciates the opportunity to provide comments on the changes being proposed for the I/DD Waiver Manual.

**General Comments:**

The Council was surprised to see the addition of the words “provided by awake and alert staff” throughout the Manual. The necessity to add this phrase raises grave concerns about the quality and training of direct support staff in the State. (Parenthetically, some recent DHHR licensure review reports have also pointed out problems in the area.)

The Council agrees with the additional wording throughout allowing staff to compile data collected in daily documentation during their shift as long as the safety/health and oversight of the Member is not compromised. This appears to be a reasonable addition, and makes permissible the actions that likely were already occurring.

CMS has published a statement that, based on the Congressionally passed “Rosa’s Law” in 2010, Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) will now be referred to as “Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID).” This change should be reflected in the Waiver Manual Definitions and throughout the document.

Please note that there remain several other policy and practice related issues and concerns with WV’s I/DD Waiver program. Those unresolved concerns are contained in previous sets of comments on the I/DD Waiver renewal application and manual.

**Specific Comments:**

**513.2.2.1 Additional Qualifications for Traditional Option Agency Staff and Participant-Directed Option Agency with Choice Model Staff**

The Council does not have an opinion on the expansion of options for receiving training on CPR and First Aid, but would like to suggest that the website address for the list of approved agencies mentioned be included throughout the Manual. It takes several clicks to find the correct section of the website.

**513.2.2.1.1 Criminal Investigation Background Check for Traditional Option Agency Staff and Participant-Directed Option Agency with Choice Model Staff** (and throughout the Manual)

The addition of the requirement for an additional federal background check for prospective employees who have worked (rather than just lived) out of state is a very positive change.

**513.2.2.1.2 Protective Services Record Check for Traditional Option Agency Staff and Participant-Directed Option Agency with Choice Model Staff** (and throughout the Manual)

The addition of a requirement to complete a WVDHHR Protective Services Record Check annually (rather than just upon hire) is a very positive change.

**513.2.2.1.3 Office of the Inspector General (OIG) Medicaid Exclusion List Check for Traditional Option Agency Staff and Participant-Directed Option Agency with Choice Model Staff**

Allowing provider agencies to keep one document with multiple staff names on file (rather than a separate form for each staff member) in this case, appears to be reasonable, and likely less burdensome, for agencies.

**513.2.4.4 Self-Reviews**

It is the understanding of the Council that the change from quarterly to biennial self-reviews is to bring the I/DD Waiver requirement in line with the A/D Waiver requirement. The Council does not believe that quality can be assured with such an extreme change to the requirement and is opposed to this change. Furthermore, the Council strongly believes any change in frequency should rightfully be discussed and agreed upon by the I/DD Waiver Quality Improvement Advisory (QIA) Council. Rather than lengthen the period between self-reviews for the I/DD Waiver, the Council suggests the period for the A/D Waiver be shortened.

**513.3.2.2 Functionality** (and 513.4)

The Council has serious concerns and would like to see justification for the further restriction on eligibility requirements in this section. It is our understanding that the ABAS II does not include the domain of Capacity for Independent Living, and that several areas (identified in this change as sub-domains) are used to evaluate this major life area. If Capacity for Independent Living is not an actual domain on the ABAS II, how was it determined that three of the grouped together areas must be met to register as a deficit in this life area? Our research can find no reference

to this requirement, other than in a copy of the *Findings of Fact and Conclusions of Law* from a WV DHHR hearing dated July 18, 2011, which leaves out the ‘employment’ sub-domain. It would appear that an evaluator can independently determine which areas of the ABAS II will be used to determine Capacity for Independent Living.

While the State has the right to set the criteria for eligibility for this program, those criteria should be based upon legitimate and nationally recognized standards. The inclusion of more stringent criteria for a major life area could allow for the addition of multiple sub-domains to other major life areas in the future. This may result in an ever changing determined number of those being required to be met in order to meet the criterion of a deficit in that area.

Please provide the Council office with the assessment tool or other documentation which shows the requirement for substantial limitations in at least three sub-domains as a means to determine that there is a deficit in the major life area of *Capacity for Independent Living*.

#### **513.3.4 Slot Allocation Referral and Selection Process**

The Council questions the need to place a 90 day restriction on the availability of a funded slot. We believe there could be a few legitimate circumstances in which an enrollee might not be able to access services within 90 days. In cases in which such a person is in an ICF/IID facility, state facility, or nursing facility, a longer time needs to be permitted. The person would be ‘penalized’ if he or she loses a slot due to a lack of aggressive, creative actions by his or her program planning team members. The emphasis needs to be on providing oversight and possibly technical assistance to those teams. Otherwise, the person could continue to be inappropriately confined to an institutional setting.

#### **513.8.2.4 Critical Juncture IDT Meeting**

Although the intent may be good, the requirement for a face-to-face meeting when a Member moves would not generally be necessary for a Member living with their family. A family’s move from one home to another would not be based on the agreement of the IDT, which is indicated in this proposed change. If the intent is to require a meeting be held when a Member living in another type of setting moves, it appears to be covered in the preceding circumstance listed (the Member changes residential setting).

### **513.9.1.6 Facility-Based Day Habilitation: Traditional Option**

The Council is in agreement with the addition of a minimum age for accessing this service and advocates that Members under the age of 18 have access to age appropriate, integrated, and normative services in lieu of this.

### **513.9.1.12.1 Skilled Nursing: Licensed Practical Nurse: Traditional Option Definition of Service:**

The billing clarifications provided for staff serving more than one Member are a welcome addition to the Manual.

### **513.9.1.15 Therapeutic Consultant: Traditional Option**

#### **Definition of Service:**

Two of the functions listed that can be performed by a Therapeutic Consultant who has met the training requirements as a Behavior Support Professional (BSP) are already listed in the previous section of functions a Therapeutic Consultant can perform. They are:

- “Present proposed restrictive measures to the .....Human Rights Committee if no other professional.....regarding the member;” and
- “Attend and participate in IDT meetings and the annual.....if requested by the member or their legal representative.”

### **513.9.1.16.1 Transportation: Miles: Traditional Option, Limitations/Caps (and throughout the Manual)**

The billing clarification for mileage when more than one Member is being transported is a welcome addition to the Manual.

### **513.9.1.16.2 Transportation: Trips: Traditional Option, Definition of Service**

The Council would like to see the same billing requirements for mini-van/mini-bus transportation as is clarified in **513.9.1.16.1**. The billing of total miles for each individual when more than one Member is in the vehicle encourages the mass transportation of individuals with developmental disabilities and does not promote individualized activities for Members.